IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1252 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ILIASBHAI ABDULKADAR MEMON

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1252 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MR K.T.DAVE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 06/09/2001

ORAL JUDGEMENT

By filing this petition under Article 226 of the Constitution, the petitioner/detenu who has been detained by the District Magistrate, Banaskantha at Palanpur vide

order dated February 7, 2001 (Annexure-A to the petition), in exercise of the powers conferred under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short hereinafter), has assailed the order of detention on various grounds and has prayed to issue writ of habeas corpus or any other appropriate writ or order quashing and setting aside the impugned order of detention and further prayed to set him at liberty forthwith.

2. The grounds of detention order dated February 7, 2001 manifest that the petitioner is a prohibition bootlegger within the meaning of Section 2(b) of the Act and he is carrying on the alleged antisocial activities pertaining to illegal business within the jurisdiction of Ahmedabad City. The detaining authority, therefore, relied upon two offences registered under the Prohibition Act against the petitioner/detenue and the statements of two witnesses were recorded and therefore, according to the detaining authority his activities are prejudicial to maintenance of public order and therefore, powers under Section 9(2) of the Act are exercised by the detaining authority.

3. The petitioner has challenged the order of detention on various grounds. However, Ms Subhadra Patel, learned advocate for the petitioner has restricted her arguments to the effect that subjective satisfaction recorded by the detaining authority under Section 9(2) of the Act cannot be considered as genuine. In order to substantiate her submissions she placed reliance on the statements of two witnesses recorded by the L.C.B. Crime Police Inspector, Palanpur on January 17, 2001 and the statements of witnesses are verified by the Dy. Police Officer on January 21, 2001 and the order of detention came to be passed on February 7, 2001. Therefore, it can be said that the detaining authority has not verified the statements and therefore, subjective satisfaction recorded by the detaining authority cannot be considered as genuine and therefore order of detention is vulnerable as it is bad in the eyes of law and deserves to be quashed and set aside.

4. Mr. K.T.Dave, learned AGP has opposed the petition. However, he does not dispute the factual aspect of verification of statements of witnesses which were recorded by the L.C.B. Police Inspector, Palanpur on January 17, 2001 and verified by the Dy. Police Officer on January 21, 2001.

5. It may be appreciated that there is no manner of

doubt that the statements of witnesses can be verified by the officer other than the detaining authority but the detaining authority has to assign the reasons why statements were verified by the subordinate officer and how he has relied upon the verification made by the subordinate officer.

6. In the instant case, detaining authority has not assigned any reason for not verifying the statements of witnesses by himself and in the absence of any affidavit in reply and the impugned order is also silent about the said fact, in my view subjective satisfaction recorded by the detaining authority cannot be considered to be a genuine. Hence order of detention deserves to be quashed and set aside.

7. For the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned order of detention dated February 7, 2001 is hereby quashed and set-aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*